IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.6572 OF 2005

The State of Maharashtra,
(Through D.R.Sawant,
Assistant Commissioner of Police,
Economic Offence Wing, ...Applicant
Crime Branch, C.I.D., Mumbai. (Ori.Complainant)

Versus

Ketan Kamalakar Tirodkar,
Resident of 7 Mauli Building,
Tandon Path, Ram Nagar, ...Respondent
Dombiwali (East), Thane. (Ori.Accused)

.....

Mr.A.S.Gadkari, A.P.P. for Applicant.
Mr.Ketan Kamalakar Tirodkar, Respondent in-person.

.....

CORAM: A.M.KHANWILKAR, J.

JUNE 5, 2006.

ORAL ORDER :

1. This Application is filed by the State of Maharashtra, under Section 439(2) read with Section

482 of the Code of Criminal Procedure, challenging the order passed by the Special Judge under Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to as 'MCOCA'), Mumbai dated August 4, 2005 in Bail Application No.24 of 2005 in MCOCA Special Case No.11 of 2004. By that order, the Trial Judge granted interim bail to the accused No.1 Shri Ketan Kamalakar Tirodkar. The Respondent is prosecuted along with two others for offence punishable under Section 3(1)(i)(ii), 3(2), 3(4), 3(5) of MCOCA read with Section 120-B of the Indian Penal Code read with Section 387 read with Section 34 of the Indian Penal Code.

2. The reason for showing such indulgence to the Respondent as can be culled out from the penultimate paragraph of the said order, inter alia is as follows:

> (1) The accused intends to agitate certain questions before the High Court and to give him adequate and just opportunity to do so, it is necessary to release him on interim bail.

(2) The present offence against the Respondent accused is consequence of private complaint filed by the Respondent accused against the Police Officer and others named therein.

(3) The co-accused Shri Rameshwardas Chainsukhdas Agarwal has been released on bail.

(4) The Police Officer who has been named as accused in the private complaint filed by the Respondent accused has challenged the order of issuance of process and is enjoying freedom, and lastly;

(5) Recently, Supreme Court in the decision in the case of C.R.Patil vs. State of Gujarat, SLP (Criminal) No.5321 of 2004 decided on 22nd July 2005 granted temporary bail to the accused named in the said case.

3. On the aforesaid considerations, the Trial Judge passed the following order :

> "Bail application No.24/2004 is allowed accordingly.
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> Since I had earlier rejected the prayer for reference by order dated 25.08.2004 in his earlier B.A.No.12/2004. I do not consider it proper to entertain the prayer for reference by this Special Court. More so, when detailed observation were made in order passed by this Court on 25.8.2004.
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> According to applicant earlier his father and mother had been accepted as two sureties for him and their original documents are with the Sessions Registrar. If that is so; sessions Registrar may accept the documents as security, if it is adequate security in the sum of Rupees One lakh.
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> Applicant shall enter into fresh personal bond in the sum of Rupees One lakh."

4. The State has challenged this order on the principal argument that on the earlier occasion, on similar consideration, the Trial Judge had released the accused on interim bail, initially by ad-interim order dated 23rd July 2004 which order was later on confirmed on 25th August 2004. That order, however, was carried in appeal by the State

before this Court on the ground that the Trial Judge committed manifest error in releasing the Respondent accused on interim bail on the sole ground that he should be given opportunity to effectively pursue legal remedy available to him arising from the private complaint filed by him before the same Court under the provisions of MCOCA. This Court, vide order dated 21st October 2004, was pleased to set aside the said view taken by the Trial Court on the finding that it was plainly extraneous to the scheme of provisions of MCOCA, while deciding Criminal Application No.4229 of 2004.

5. In the said decision, at the outset I have made reference to the Judgment which was delivered by me on 29th September 2004 in the case of **Anil Umrao Gote vs. State of Maharashtra in Criminal Application No.4023 of 2004**; wherein, on analysing the relevant provisions of the Act and the legal position, it was held that a Special Judge or for that matter, the High Court, even if inclined to release any accused involved in offence under special Act such as MCOCA, it is obligatory for the

Court to first record its satisfaction about the fulfilment of the conditions specified in Section 21(4) of the Act. It is clearly held that it is only on recording such satisfaction, the fetter imposed by the Legislature on the power of the Court for granting bail to any accused involved in the commission of offence under the special Act (MCOCA) stands lifted. The said decision is now reported in **2005 All M.R. (Cri.) 350**. Inspite of such clear opinion recorded in Para 3 of the earlier decision of this Court in the case of the Respondent, the Trial Judge in the impugned Judgment has once again adopted the same reason- which had weighed with him while releasing the Respondent on interim bail on the earlier occasion. This is the primary grievance made on behalf of the State. According to the State, the Trial Judge has not even adverted to the said decision in the case of **Anil Gote (supra)**, which is referred to in Para 3 in the earlier order of this Court dated 21st October 2004, which was the basis for setting aside the earlier order of temporary bail granted by the Trial Court. This, according to the learned A.P.P. is nothing short of judicial impropriety or

judicial indiscipline. Besides, it is the case of the State that the impugned order refers to additional reasons. However, going by the dictum of this Court in the earlier order passed against the Respondent, even those reasons by themselves, are extraneous to consider the prayer for interim bail in relation to offence under the provisions of Special Act i.e. MCOCA. Besides, it is contended that the Trial Judge has not provided any outer limit for releasing the Respondent accused on interim bail. Moreover, the principal reason on which the Respondent accused came to be released on interim bail has been accomplished, inasmuch as the hearing of the matter before the Full Bench has concluded and the Full Bench of this Court has already finally decided the various issued raised before it. On the above submissions, it is contended on behalf of the State that the impugned order passed by the Trial Court, of once again releasing the Respondent accused on interim bail in utter disregard of the earlier order passed by this Court, cannot be sustained on facts or in law.

6. The Respondent has appeared in person. He

submits that there is no infirmity in the view taken by the Trial Court. According to him, the basis on which, the operative order has been passed by the Trial Judge is appropriate and expedient in the fact situation of the present case. According to him, the Court has power to release the accused, named even in an offence under the provisions of MCOCA, on temporary bail. He submits that the order passed by the Trial Judge is one in the interest of justice and being discretionary order, should not be interfered with. According to the Respondent, assuming that the view taken by the Trial Judge is wrong and cannot be sustained, even so, as the Respondent has enjoyed the interim bail since August 2005, it will be inappropriate for this Court to interfere with such discretionary order merely because the said order is subject matter of challenge before this Court. To buttress this submission, Respondent has relied on the decision of the Apex Court in **A.I.R. 1991 S.C. 558 in the case of Narcotics Control Bureau vs. Kishan Lal**. Reliance is also placed on decision of the Apex Court reported in **AIR 2002 SC 2435 in the case of State of U.P. vs. Atique Ahmad and case**

of Biman Chatterjee v. Sanchita Chatterjee & Anr. decided on February 10, 2004 in Criminal Appeal No.193 of 2004; Mohan Singh vs. Union Territory, Chandigarh reported in AIR 1978 SC 1095. Reliance is also placed on the order passed by this Court (Justice A.S.Oka) on the application filed by the State of Maharashtra for cancellation of bail granted in favour of co-accused Rameshwardas Chainsukhdas Agarwal. Reliance is placed on the decision of the Apex Court in the case of **Srichand P. Hinduja vs. State Through C.B.I., New Delhi reported in AIR 2002 SC 401** that Court can grant interim bail. Reliance is then placed on the decision of the Apex Court on the point that there is marked distinction between the parameters for cancellation of bail in the case of **Samarendra Nath Bhattacharjee vs. State of West Bengal reported in AIR 2004 SC 4207, Bhagirathsinh Judeja vs. State of Gujarat reported in AIR 1984 SC 372; State vs. Sanjay Gandhi reported in AIR 1978 SC 961, Talab Haji Hussain vs. Madhukar Purshottam reported in AIR 1958 SC 376; and Subhendu Mishra vs. Subrat Kumar Mishra reported in AIR 1999 SC 3026.** Relying on these decisions, it is contended by the

Respondent that even if the impugned order is palpably wrong, this Court should not interfere with the operative order and instead permit the Respondent to remain on bail till appropriate orders are passed by the Trial Court.

7. Having considered the rival submissions, I have no hesitation in taking the view that the approach of the Trial Court in granting interim bail to the Respondent on the same consideration, inspite of the earlier order passed by this Court on 21st October 2004, to say the least, is judicial impropriety or judicial indiscipline. I am conscious of the fact that ordinarily such strong observation should be eschewed. However, in the present case, I am inclined to accept the criticism of the learned A.P.P. that in view of the earlier order passed by this Court in this very matter, it is incomprehensible that the Trial Court could grant interim bail to the Respondent on the same consideration-that too, disregarding the legal position expounded in **Anil Gote's case (supra)**, which was applied by this Court on the earlier occasion to set-aside the previous interim bail

order passed by the Trial Court. It is relevant to note that on the earlier occasion, the only basis for setting aside the previous interim bail order passed by the Trial Judge, it was noted that it is obligatory for the Court to first record its satisfaction about the fulfilment of conditions specified in Section 21(4) of the Act. Unless such satisfaction was recorded, the fetter on the Court whether the Special Judge (Trial Judge) or the High Court is not lifted and the Court cannot assume jurisdiction to release such accused on interim bail having regard to the scheme of the provisions of MCOCA. Inspite of such clear finding noted and relegating the parties before the Trial Judge, the Trial Judge has once again adopted the same reason which weighed with him on the earlier occasion, which was set aside being extraneous to the issue of grant or non-grant of interim bail to the accused who is involved in the offence under the special enactment such as MCOCA. I may observe that the order which is impugned in the present Application runs into 39 pages. However, the substantial discussion undertaken by the Trial Judge is wholly extraneous to the point in issue.

The reasons, which I have already reproduced in the earlier part of this order as weighed with the Trial Judge on this occasion, can be culled out only from the penultimate paragraph of the impugned order. The five reasons recorded by the Trial Court, as I have already observed, by itself singularly or collectively are clearly extraneous to the requirement of recording satisfaction regarding fulfilment of conditions specified in Section 21(4) of the Act. Inasmuch as, the fact that the Respondent should be given opportunity to pursue legal remedy before Court of law, by itself, can be no justification to release the accused on interim bail who is arraigned as accused in offence under the provisions of MCOCA. Similarly, the fact that the present offence registered against the Respondent accused emanates from the private complaint registered against the Respondent accused is also of no consequence. The fact that co-accused Rameshwardas Chainsukhdas Agarwal has been released on bail also can be of no avail to grant interim bail to the co-accused. The Court, nevertheless, was required to record its satisfaction insofar as the present accused

(Respondent). Be that as it may, insofar as order releasing co-accused Rameshwardas Chainsukhdas Agarwal is concerned, the Trial Judge has recorded reasons for such indulgence. Those reasons were subject matter of challenge before this Court and this Court has approved that order passed by the Trial Judge. That does not mean that those reasons would squarely apply to the case of the present Respondent accused. It is not the finding of the Trial Judge that the said reasons would apply on all fours to the case of Respondent herein. Suffice it to observe that the fact that the co-accused Rameshwardas Chainsukhdas Agarwal has been released on bail, by itself, can be no consideration to grant interim bail to the Respondent accused who has been named in offence punishable under the provisions of MCOCA. The fourth ground which has weighed with the Trial Court is that the accused who has been named by the Respondent in his private complaint is enjoying freedom. Once again, this can be no consideration for showing indulgence to the Respondent accused in granting interim bail. All the aforesaid four reasons are far fetched reasoning to justify the

order of interim relief as passed by the Trial Judge, which is in total disregard of the legal position and the requirement stated by this Court in order dated 21st October 2004.

8. That takes me to the last ground which has weighed with the Trial Judge. According to the Trial Judge, the Supreme Court in one of the recent case in **C.R.Patil vs. State of Gujarat (supra)** was pleased to release the accused on temporary bail. That decision is of no avail to the case on hand. The said decision pertains to offence which is under ordinary law. There is nothing in the decision of the Supreme Court, which I have carefully examined, to suggest that even in respect of MCOCA offence, such power can be exercised by the Court unconditionally to release accused on temporary bail. Suffice it to observe that the Trial Judge has made reference to the decision of the Apex Court which has no causal connection with the case on hand. Whereas, the impugned decision is in total disregard to the legal position stated by this Court in the case of **Anil Gote (supra)** which was binding on the Trial Judge, especially

when in the earlier order passed on 21st October 2004, specific reference has been made to the said decision with observation that the Trial Judge is expected to abide by the legal position stated in the said decision. It is intriguing that the Trial Judge has not even referred to the decision of **Anil Gote (supra)** which is the direct decision on the point, leave alone, following the ratio laid down in the said decision. It is, therefore, rightly submitted by the learned A.P.P. that this is nothing short of judicial impropriety or judicial indiscipline. The Respondent had relied on the Supreme Court decision in the case of **Srichand Hinduja (supra)** to contend that the Court has power to grant interim bail. Indubitably, the power to grant interim bail is available to the Court even in respect of offence under MCOCA. However, that power will have to be exercised in consonance with the fetters provided for in the special enactment. Besides, as the Supreme Court decision pressed into service pertains to offence under ordinary Law, the same is of no avail.

9. Be that as it may, I find substance in the

submission canvassed by the State that the order in question does not specify the outer limit (period) upto which the interim bail was to be enjoyed by the Respondent accused. Assuming the purpose for releasing the Respondent accused on interim bail was to facilitate him to pursue legal remedy before the Full Bench of this Court, the said proceedings having been finally decided by the Full Bench, the purpose for which interim bail was granted to the Respondent accused has been worked out.

10. A priori, the inevitable conclusion is that the approach of the Trial Judge in allowing the application preferred by the Respondent accused cannot be sustained on facts or in law. To get over this position, Respondent relies on the decisions of the Apex Court in the case of **Narcotics Control Bureau vs. Kishan Lal (supra)** and the decision in the case of **State of U.P. vs. Atique Ahmad (supra)** as well as in the cases of **Biman Chatterjee and Mohan Singh (supra)**. Indeed, the case of **Narcotics Control Bureau (supra)** deals with offence under the provisions of N.D.P.S. Act which is special enactment. However, what is

overlooked is that in Para 8 of this decision, statement of the prosecution is recorded that the Narcotics Control Bureau was not pressing for cancellation of bail of the two accused, who were wrongly released on bail by the High Court. That decision, therefore, can be of no avail to the Respondent. The Respondent had then relied on the other decisions referred to above including the case of **State of U.P. vs. Atique Ahmad (supra)**. In Paragraph 6 of this decision, the Apex Court has noted that as there were no allegations against the accused about the commission of any crime, or having misused the liberty granted while on bail, it was unnecessary to interfere with the order of bail, though it was a wrong order passed by the High Court. In Paragraph 6 of the said decision, the Court has then noted that the short period (of bail) of five weeks was remaining, for which reason, it did not think it necessary to overturn the order of bail granted by the High Court which was challenged. The observation made is in the fact situation of that case. Moreover, the decisions relied upon are concerning offences under ordinary Law. To my mind, the direct authority on

the point, however, is the decision of the Apex Court reported in **AIR 2001 SC 2023 in the case of Puran vs. Rambilas**. Similar argument was canvassed before the Apex Court. The Apex Court has rejected such contention by observing that if the matter is brought before the Superior Court, challenging the order passed by the lower Court being arbitrary or wrong exercise of discretion, such order can be corrected by the Superior Court. In such cases, the question of considering the challenge on the touch stone of principles of cancellation of bail will strictly not apply. In paragraph 9 of this decision, the Apex Court has observed thus :

> "9. .....It is, however, to be noted that this Court has clarified that these instances are merely illustrative and not exhaustive. One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an order would be against principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It must be remembered that such offences are on the rise and have a very serious impact on the Society. Therefore, an arbitrary and wrong exercise of discretion by the trial Court has to be corrected."

. In Para 10, the Apex Court further noted as follows :

> "10. Further, it is to be kept in mind that the concept of setting aside the unjustified, illegal or perverse order is totally different from the concept of cancelling the bail on the ground that accused has misconducted himself or because of some new facts requiring such cancellation. This position is made clear by this Court in Gurucharan Singh v. State (Delhi Admn.), reported in AIR 1978 SC 179 : (1978 Cri.L.J. 129). In that case the Court observed as under (Para 16):
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> > "If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arise which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the superior Court under S.439 (2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existed, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of

> the bail. This position follows from the subordinate position of the Court of Session vis-a-vis the High Court. "

. Observation made in Paragraph 12 is also of some relevance which reads thus :

> "12. Our view is supported by the principles laid down in the case of Gurucharan Singh v. State (Delhi Administration), reported in (1978) 1 SCC 118 : (AIR 1978 SC 179 : 1978 Cri.L.J. 129). In this case it has been held, by this Court, that under Section 439(2), the approach should be whether the order granting bail was vitiated by any serious infirmity for which it was right and proper for the High Court, in the interest of justice, to interfere."

11. Suffice it to observe that the case on hand is not strictly one of cancellation of bail but challenging the correctness of the order passed by the Trial Court- which order according to the prosecution is perverse, arbitrary and wrong exercise of discretion. Thus understood, the argument of the Respondent that since he has availed of bail from August 2005, that arrangement be continued to enable the Respondent to pursue his

other legal remedies, does not commend to me. In such a situation, the appropriate course is to set aside the impugned order and accept the request of the prosecution to take the Respondent accused in custody.

12. At this stage, I may briefly make reference to the other decisions which were pressed into service by the Respondent. The Respondent has placed compilation of reported decisions on which he is relying. However, these decisions are broadly on the principle as to the parameters on which order of bail should be granted and also about parameters on the basis of which order of cancellation of bail should be passed. Those decisions will be of no avail to the case on hand. In the present case, as is mentioned earlier, it is one of setting aside an erroneous and arbitrary order passed by the subordinate Court being perverse and wrong exercise of discretion. In such case, the question of applying the principles of cancellation of bail will be of no relevance; more particularly, when the offence in question relates to special enactment such as MCOCA, which obligates

the Court to release the accused on bail only on fulfilment of conditions in terms of Section 21(4) of the Act.

13. On this reasoning alone, the Application ought to succeed and the impugned order will have to be set-aside and Respondent accused will have to be taken into custody. The Respondent accused however submits that he cannot be faulted for the non-recording of germane reasons by the Trial Judge. According to him, he had argued all the relevant aspects before the Trial Judge. The Trial Judge was expected to deal with those aspects and having failed to do so, it should not prejudice the Respondent. He submits that the Respondent would persuade this Court that on merits, the conditions specified in Section 21(4) of the Act are fulfilled. The Respondent was informed that if such exercise was to be undertaken by this Court, it would affect the merits of the proposed regular bail application to be filed by the Respondent, which remedy was available to him. Respondent, however, submits that he has no difficulty if this Court was to consider the entire matter on its own

merits instead of relegating him before the Trial Court. The Respondent submits that as a consequence of setting aside of the impugned order, the Respondent will be physically taken into custody. However, before he is physically taken into custody, he would submit to the jurisdiction of this Court, so that, this Court may consider formal bail application to be filed on his behalf. The Respondent at the hearing of this Application, tendered amended copy of regular bail application for being decided on its own merits. Initially, I was inclined to accept the request of the Respondent to consider his regular bail application directly before this Court. However, after some deliberations, I felt that the proper course is to relegate the Respondent before the Trial Court to consider prayer for regular bail. This is so because both sides will have opportunity of questioning the correctness of the decision to be passed on that application before this Court, which opportunity would be otherwise lost. Moreover, this Court will have the advantage of reasons to be recorded by the Trial Court for grant or non-grant of bail to the Respondent, having regard to the

materials on record. In this backdrop, the Respondent was once again called upon to consider whether he would like to avail of the remedy of regular bail before the Trial Court in the first instance. Thereafter, the Respondent pondered over the matter and took informed decision that he may be allowed to move the Trial Court with prayer for regular bail. The Respondent accordingly requested the Court to make necessary observation in that behalf. In this view of the matter, no orders are required on the Application tendered by the Respondent to the Court, which contains prayer for regular bail. In fact, the said Application has not been formally registered. Office shall ignore the said Application, as the Respondent desires to move the Trial court for the said relief.

14. Accordingly, this application succeeds. The impugned Judgment and Order is set-aside. The Application preferred by the Respondent accused for interim bail before the Trial Judge being Bail Application No.24 of 2005 stands dismissed. Instead, it is ordered that the Respondent be taken into custody.

15. The Respondent accused however, prays that he should be granted two weeks time to surrender before the Trial Court and to apply for regular bail, if so advised. This request is accepted as the prosecution has no serious objection to grant this limited indulgence in the interest of justice. This indulgence is shown on the assurance given by the Respondent that he will surrender before the Trial Court within specified time. Accordingly, if application for regular bail is filed by the Respondent after surrendering before the Trial Court, the Trial Judge will proceed to decide the same expeditiously, to be finally disposed of within four weeks from the date of its presentation.

16. It is made clear that the Trial Judge will decide the said application on its own merits in accordance with law, uninfluenced by any observations made in its earlier order in relation to the present accused or the present order passed by this Court.

17. It is made clear that if the Respondent fails to surrender before the Trial Judge within two weeks from today, it will be open to the Investigating Agency to proceed against the Respondent in accordance with law.

18. Application disposed of on the above terms.

19. Office is directed to place copy of this order before the Registrar General, High Court, so that, the same can be brought to the notice of the concerned Authority in the light of the observations made in this order qua the Trial Judge for necessary action.

A.M.KHANWILKAR, J.